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Current Topics.

The Budget.

No Budget speech is nowadays unsensational, even if, in the medical metaphor used by Sir JOHN ANDERSON in the Commons on 25th April, it is "the mixture as before." Among the interesting items of news the Chancellor's recent speech contained was the fact that actual receipts from income tax, including sur-tax, were £1,184,000,000 during the past year, being £9,000,000 more than estimated. Excess profits taxation yielded almost precisely the estimate of £500,000,000. The yield of all the Inland Revenue duties, £1,878,000,000, was only five millions in excess of the estimate. There was, however, a substantial increase over the estimate in the receipts from the Board of Customs and Excise, the figure being £1,043,000,000, and the increase being £67,500,000,000. This was partly due to the unexpected maintenance of consumption of tobacco and beer, in spite of increased taxation, and partly due to the difficulty of estimating in advance the rate of consumption of oil by the Armed Forces. The purchase tax had hitherto been a very difficult item to forecast, but the estimate of £90,000,000 was exceeded by less than 2 per cent. Miscellaneous revenue, as in previous years, was higher than the Budget estimate, because that estimate included the contributions and premiums under the War Damage Act. The total revenue was £3,039,000,000, or £131,000,000 over the estimate, while the excess of expenditure over revenue was £2,760,000,000 or £89,000,000 less than the Budget estimate. To meet that, the proportion of borrowings represented by the sale of national war bonds and savings bonds to non-official holders amounted to 34 per cent., as compared with 31 per cent. in the previous year. The proportion borrowed in the form of small savings rose from 21 per cent. in 1942–43 to 25 per cent. last year. Personal savings had reached £1,499,000,000, as compared with £1,300,000,000 assumed in the Budget. Certain defects in the machinery of collecting purchase tax required remedying, the Chancellor stated, and he proposed including the necessary clause for this in the Finance Bill. A resolution would be necessary in order to provide relief to authors regarding lump sum payments for copyright, which, under the existing law, were treated as income for the year of receipt, even though the author might have spent years on the work. With the present rates of taxation that might be very discouraging to literary effort, and the Finance Bill would contain provisions enabling an author, if he so desired, to spread a lump sum payment back over a period of three years or the actual period of preparation of the work, if shorter.

The Excess Profits Tax.

IN the course of his speech the Chancellor intimated that he could not entertain any suggestion for the reduction of the 100 per cent. tax as long as hostilities lasted, and he reminded those who complained of the rate that the law had made special provision for the refund, after the end of the war, by way of a post-war credit, of 20 per cent. of the net amount of the 100 per cent. rate. As regards the general basis of the charge, the Chancellor proposed a modest relief, especially important to small businesses, for those cases, of which there were thousands, where some standard, other than the profits standard, applied. Subject to one qualification, he proposed that, as from the 1st April, all standards, except profit standards, should be increased by £1,000. That increase would apply to the cases where the standard was a minimum standard, or a personal working proprietor standard, or a standard representing a percentage on capital employed in the business. It would benefit 30,000 small businesses, 10,000 of which would pass out of charge. The qualification was that, generally speaking, deficiencies of profits below the standard in any accounting period worked either backwards or forwards as a debit against the excess profits of another period. Deficiencies due to this new relief would work forwards, and not backwards. That was to say, they could be set against excess profits of future periods, but not against excess profits of past periods. Largely arising out of this relief, a strengthening of the provisions of s. 35 of the Finance Act of 1941, dealing with the avoidance of taxation, would be required. He had taken into account the cost of the adjustment of this. The cost in a full year would be £12,500,000. Compared to the almost astronomical figures with which the Chancellor so ably dealt in his speech, this is a small cost indeed for the removal of a real injustice.

Mining Subsidence.

SOLICITORS who have been concerned in litigation arising out of mining subsidences in colliery areas know of the expense, inconvenience and anxiety that is caused to householders in these areas, through no fault of their own, by damage which, in more than one sense, is akin to bomb damage. Mr. DAGGAR'S speech on this subject on the adjournment in the Commons on 18th April should help to jog the elbow of the Ministry of Fuel and Power and the other departments concerned in the consultations which were promised on their behalf on 2nd March. Mr. DAGGAR gave a number of instances of owner occupiers of dwelling-houses in his area who had been displaced from their houses and had experienced difficulties in finding accommodation elsewhere. Mr. DAGGAR also said that it was inexplicable that the Government did not impose the obligation to effect repairs upon the persons who received payment for the working of the coal in the form of royalties. As the State now owned the rights to this coal, the Government had a special responsibility to the owners of damaged property. In some instances known to Mr. DAGGAR personally, it would involve an expenditure of over £100 to repair a single house. In one area the cost of replacing a length of sewer damaged by subsidence was £1,650. During a particular period a sewerage board, for similar repairs, paid over £35,420. The Joint Parliamentary Secretary to the Minister of Fuel and Power (Mr. TOM SMITH) assured the House that a Royal Commission had reported in 1927 that private owners or occupiers of property of £40 annual rateable value or less, who had no right of support or compensation, should have the right to claim damages in the county court. A Bill had been introduced in 1939, but it had been mutilated in committee and on the outbreak of war had not been proceeded with. Mr. DAGGAR must be congratulated in pressing for and obtaining a full statement on this important question and eliciting the useful information that consultations with the Departments involved are in progress.

Legal Aid.

SOLICITORS, who have no particular reason to be satisfied with the way in which the system of legal aid for the poor works, are ready to hear and consider reasoned proposals for the reform of the system from all interested persons and bodies. Outstanding among recent efforts to reconsider the situation were the articles by Mr. E. J. COHN in the last two issues of the *Law Quarterly Review*, which were analysed in a leading article in this Journal on 19th February (*ante*, p. 63), and the work of the Haldane Society, to whose interim proposals on the subject we referred at p. 45, *ante*. In *The Times* of 27th April the hon. secretary of the Haldane Society, Mr. STEPHEN MURRAY, expresses the desire of his society to associate itself with the statement in Mr. COHN'S articles that "legal aid is a service which the modern State owes to its citizens as a matter of principle. It is part of that protection of the citizens' individuality which . . . can be claimed by those citizens who are too weak to protect themselves . . . The law is made for the protection of all citizens, poor and rich alike. It is, therefore, the duty of the State to make its machinery work alike for the rich and the poor." It is, unfortunately, well known, Mr. MURRAY wrote, that the existing "poor persons procedure" is inadequate to meet the needs of the poor litigants, in spite of the devoted work of Mr. HASSARD-SHORT; and that the difficulties of the Bentham Committee and others who run poor man's lawyers have greatly increased in recent years, so that they are

quite unable to fill the role they would wish to fill. He added that the subject was so complex, and so many differences of opinion might arise on it, that his society has decided to ask the Government to appoint a Royal Commission to inquire into and report on this subject on the broadest possible lines. The last official inquiry into this problem was in 1928, but conditions had changed since then, as also had ideas as to the State's duties. It is to be hoped that this excellent suggestion will not go unnoticed in official quarters, for even if the extreme view that there is little ground for complaint be conceded, the fact that a large number of persons of experience hold the contrary view is sufficient under the circumstances to render an inquiry necessary. As the late LORD HEWART once said, "Justice should not only be done, but should manifestly be seem to be done."

The Jury System.

IT is generally agreed nowadays that one of the surest safeguards of the liberty of the subject is the jury system, together with the increased certainty of justice that is felt to be the result of the necessity for a unanimous verdict. Originally used by the Norman monarchs as a method of extracting information which would be useful to the governing classes, it was at first bitterly hated, then tolerated, and finally adopted as a permanent institution. A question put to the Brains Trust on 4th April dealt with the importance of trial by jury as a precaution against political interference with justice. The Trust had the good fortune to number Professor GOODHART among its members. He expressed the opinion that in civil matters the good sense of a jury was valuable in actions for defamation, but could be dispensed with in other actions. In criminal law it was of great value, as the ordinary man in the street felt that he was taking part in the administration of justice. Mr. JAMES AGATE was entirely against the system and cited the case of an unnamed criminal lawyer who had such a hearty contempt for it that he found it necessary to make his points several times, the first time to satisfy the jury that someone was speaking, the second time to satisfy them that someone was speaking to them, the third time to indicate what he was saying to them, and so on. He was of the opinion that women had no logic, and that the jury should consist of university M.A.'s. Mr. DONALD MCCULLOCH thought that the jury system was a tremendous asset, and so did Mrs. SPEARMAN, who said that it had stood the storm and stress of one thousand years, referred to administrative tribunals, and said that vigilance was the price of liberty. Finally, Professor GOODHART drew attention to the interesting fact that all judges were in favour of retaining the jury system. Another interesting fact is that although the scope of the jury's work in civil matters has been severely circumscribed of recent years, the right to a jury on the personal issues raised in actions for defamation, seduction, fraud and breach of promise of marriage has remained undiminished. Moreover, although the great bulk of the country's crime is tried by magistrates, the more serious crime is tried by juries, and whenever an accused person who is in grave peril has an option to go before a jury or to have his case dealt with by the magistrates, his legal advisers usually have no hesitation in advising him to go for trial.

Repair of Houses and Building Byelaws.

IN connection with the Ministry of Health circular (49/44) (*ante*, p. 146), it is important, that, if practicable, no work should be carried out which is not in conformity with building byelaws or similar legal provisions where they are in force, or with byelaws under s. 6 or regulations under s. 12 of the Housing Act, 1936. This applies whether a local authority are doing the work on requisitioned property or in default of the owner or, alternatively, where the owner is carrying out his own work. In a strict legal sense, work upon requisitioned property may proceed irrespective of statutory or other provisions which would apply if the property were in private hands. But it would be unfortunate if any work, particularly adaptations or conversions of a permanent character, carried out on property which will revert to the owner, failed to conform to the ordinary law. Whilst endeavouring, therefore, to maintain a war-time standard of economy, the local authority should, wherever practicable, comply with the provisions mentioned. If a private owner applies for a certificate of essentiality in respect of work not complying with the Acts of Parliament, byelaws or regulations which apply, he should normally be asked to amend his application. If, however, in exceptional cases, the amendment would be impracticable or unreasonable, the matter should be given special consideration. When work undertaken by local authorities under the circular is properly chargeable to the department, e.g., on requisitioned property, the cost of the staff specifically engaged for the work, and who would not otherwise be engaged, may be charged. If a member of the permanent staff of the local authority is employed on the work, and a substitute has necessarily to be found, the cost of the substitute would be chargeable. On the other hand, expenditure on general housing work which would normally be met by local authorities must continue to be borne by them; for example, work done on non-requisitioned houses under statutory powers in default of the owner would be paid for by the local authority in the first instance and recovered from the owner. Under present procedure, when a local authority wish to requisition a house under circular 2845 and to carry out work there, they must furnish the Senior Regional Officer of the Ministry of Health with an estimate, and his approval is normally given subject to satisfactory tenders being obtained. To speed up the procedure, local authorities are relieved from the necessity of furnishing an estimate where the cost would not exceed £100, provided they attach a certificate from the appropriate Technical Officer stating that the proposed works are reasonable and sufficient to render the house fit for occupation having regard to war-time standards. On receiving consent to requisition, local authorities could then proceed with these works without obtaining the prior approval of the Senior Regional Officer. It is made clear that local authorities have no authority to complete partly built private houses at the owner's expense. If they wish to do the work, they must either buy the uncompleted house or requisition it. Where the work on any house includes a variety of items the form of contract for the whole should be that applicable to the major item. Thus, if the bulk of the work is extended first aid repairs, the Ministry of Home Security price cost form of contract can be used. Similarly, if the bulk of the work is conversion and a minor part only is war damage repair, a lump sum tender for the whole could normally be obtained. Where groups of contractors are employed on C(b) houses the form of contract adopted has been that specially drawn up for the purpose by the Ministry of Works. This form of contract may also be adopted where the grouped contractors are repairing war damaged houses in other categories. Cases have arisen where the local authority repair war damage and at the same time, by agreement with the owner, carry out repairs of dilapidations at the owner's cost. Some doubt has been expressed whether in this and similar cases the matter is covered by the authorisation given in circular 2871 or whether the owner should be required to obtain a licence from the Ministry of Works. The Ministry of Works agree that where the local authority do such work within the scope of the circular, it shall be regarded as covered by the authorisation. In order that both local authorities and the Ministry should have adequate information as to the progress of housing repair work, local authorities are asked to furnish regular monthly statistics on Form C.W. 3.

Recent Decisions.

In *Hardwicke* v. *Gilroy*, on 24th April (*The Times*, 25th April), the Court of Appeal (SCOTT, LUXMOORE and DU PARCQ, L.JJ.) held that s. 63 (3) of the County Courts Act, 1934, conferring jurisdiction on the county court in certain circumstances to hear and determine any proceedings, notwithstanding any enactment to the contrary, conferred jurisdiction to hear a counter-claim for damages for an alleged slander with a claim for damages for negligence, in spite of the provision in s. 40 (1) of the 1934 Act excluding from the county court's jurisdiction "except as in this Act provided" actions for libel and slander. Their lordships held that the expression "beyond the jurisdiction in s. 63 (1) of the 1934 Act," covered matters which were not within the normal subject-matter as well as claims not within the normal amount.

In a case before HALLETT, J., adjourned from chambers into court for judgment, on 24th April (*The Times*, 25th April), the learned judge held, that there was no inherent jurisdiction on a judge of the King's Bench Division to grant bail to a convicted person pending the hearing of a case stated by quarter sessions.

In a case before WALLINGTON, J., on 25th April (*The Times*, 26th April), the learned judge held that instructions for a will sent by a section officer in the W.A.A.F. in her own handwriting to her solicitors constituted a soldier's will made on active service, as she had been mentioned in despatches, and had been in Balloon Command and Bomber Command and at several stations she had been officer in charge of the W.A.A.F. section.

In *Shorthouse* v. *Lord Hemingford* on 27th April (*The Times*, 28th April), BIRKETT, J., held that a letter by the defendant, a solicitor, to a friend of a person who had been his client, under whose husband's will he had been a trustee, concerning a proposed marriage of his client, was under the circumstances of the case protected by qualified privilege, as in his lordship's view the defendant wrote it as a solicitor, the defendant being in the position of a guardian of the interests of his one-time client, having accepted a "sacred trust" from her late husband to advise her in the very sort of situation that did in fact arise.

In *Read* v. *J. Lyons & Co., Ltd.*, on 28th April (*The Times*, 29th April), CASSELS, J., held that a person who was injured as the result of an explosion of a shell in an armaments factory while she was there employed as an inspector of the Ministry of Supply's armaments inspection department was not debarred from suing the occupiers of the factory by reason of the maxim "*volenti non fit injuria*" and was entitled to damages for personal injuries on the basis of the absolute liability of the defendants for the mischief caused by a dangerous substance (*Rylands* v. *Fletcher* (1866), 1 Ex. 265). His lordship held that the doctrine enunciated in that case was not that the dangerous substance should escape from the land, but that it should cause mischief and it did not matter if the mischief was caused on or off the defendants' premises.

Merchandise Marks Prosecutions—the "Actual Offender."

AN interesting point under the Merchandise Marks Acts received consideration by a Divisional Court in the case of *Thompson* v. *Howard* on 21st April. A seller of ballast had been summoned under s. 2 (2) of the Merchandise Marks Act, 1887, for having in possession for sale a load of ballast to which a false trade description (of quantity) was applied. Before the justices he caused two of his employees to be brought before the court as the actual offenders, following the procedure provided by s. 6 of the Merchandise Marks Act, 1926—a statute which is construed as one with the earlier Act. Section 6 provides that "if, after the commission of the offence has been proved the employer or principal proves to the satisfaction of the court that he has used due diligence to enforce compliance with the provisions of this Act . . . and that the said other person (the employee charged as the actual offender) had committed the offence in question without his consent, connivance or wilful default, the said other person shall . . . be summarily convicted of the offence and the employer or principal shall be exempt from any penalty."

It will be noticed that s. 6 only comes into operation after the commission of an offence has been proved. But it is no offence to sell or to have in possession for sale goods to which a false trade description is applied if the employer or principal proves that he had taken all reasonable precautions against committing an offence and had no reason to suspect the genuineness of the trade description, or that otherwise he had acted innocently (s. 2 (2) of the Act of 1887). A very similar provision in s. 5 (5) of the Act of 1926 applies to most informations likely to be preferred under that Act. In such cases, s. 6 of the Act of 1926 can have no application. If an offence has been committed, the employer, having failed to prove, under s. 2 (2) of the Act of 1887 or s. 5 (5) of the Act of 1926, that he has taken all "reasonable precautions," cannot prove "due diligence" under the section which brings in the actual offender; and if the employer proves what is necessary, under s. 2 (2) of the Act of 1887, as a defence to the charge made against him, the question of the default by his servants does not arise. Those who find themselves called on to defend prosecutions of the kind discussed should therefore be slow to institute proceedings against servants as "actual offenders," as this is a procedure which may be held to imply an admission that an offence against the provisions of the statutes has been committed.

A Conveyancer's Diary.

Legacies.

THE current issue of the Law Reports contains three cases on legacies, in all of which the application was necessary because the testator disposed of particular sorts of asset instead of giving cash legacies. It seems very desirable that practitioners should, so far as reasonably possible, advise testators to confine themselves to pecuniary legacies, specific devises and residue. Of course, there are many cases where that cannot be done, as where the testator has chattels of sentimental value or desires to leave some particular person enough shares in a given company to make the legatee's position strong. Again, almost everyone leaves their surviving spouse at least a life interest in the personal chattels as defined by the Administration of Estates Act. But far too many wills refer unnecessarily to particular assets which belong (or, what is worse, do not belong) to the testator.

Thus, in *Re Gifford* [1944] Ch. 186, the testatrix devised and bequeathed the residue of her estate to her trustees on trust to pay her funeral and testamentary expenses and debts and then "upon trust to pay the income derived from my war bonds, my shares in the Brompton, Chatham, Gillingham & Rochester Water Co. and the net income derived from my four houses," which she described, to M for life, with a gift over to M's children. At the date of her will the testatrix did not possess anything which could properly be described as a war bond. She had previously had £600 5 per cent. National War Bonds, which had been converted twice, the later conversion being into £740 4 per cent. Consols. Even this conversion had been as long ago as 1928; the will was not made until 1938, but the testatrix still had the 4 per cent. Consols. After the date of the will she acquired 500 National Savings Certificates and £200 3 per cent. Defence Bonds. The question was which, if any, of these three investments passed under the gift set out above. Simonds, J., was prepared to hold that the consols did so pass under the principle "*falsa demonstratio non nocet*," following *Re Price* [1932] 2 Ch. 54, where Eve, J., had held that a gift of "my £400 5 per cent. War Loan" covered certain stocks into which a holding of £400 4 per cent. National War Bonds had been converted. The reason given by Eve, J., and cited by Simonds, J., was that "the testatrix regarded any investment she made in securities created for the purpose of helping the country during the war as War Loan." But in *Re Price* the testatrix had no other investments whatever, which made it easier to identify the stocks in question as the subject-matter of the gift. This factor does not seem to have been present in *Re Gifford*. Having held that the consols did pass, the learned judge refused to say the same of the savings certificates and defence bonds acquired after the date of the will. The "*falsa demonstratio*" rule could scarcely apply to property which the testatrix had not got, and which, so far as was known, she did not at the date of the will contemplate possessing. And indeed, it seems to have been very fortunate for the legatee that at least the case of the consols was covered by authority; approaching the matter apart from authority one might have legitimately doubted that the consols would pass.

In *Re Everett* [1944] Ch. 176, Cohen, J., had to deal with a will by which a testatrix, having appointed trustees and bequeathed pecuniary legacies, directed her trustees to "sell my freehold premises and all my stocks and shares" and to divide the proceeds equally among four persons. Her estate consisted of freeholds and investments, some of the latter being stocks and shares in limited companies. She also had some redeemable debenture stock in the London Power Co., Ltd., holdings in public utility bodies and various government securities. Cohen, J., expressed the opinion that if the will had to be construed apart from authority he would conclude, "on finding the word 'stocks' with the word 'shares,' that the meaning of the words was stocks and shares in limited companies." He expressly said that the basis of his decision was that such was the primary meaning of the gift. So far as he was entitled to look at the surrounding circumstances, he found nothing to displace this primary meaning, but rather the contrary: if "stocks and shares" had to be given a wider meaning it would cover the whole estate except cash and chattels. But the testatrix had given substantial pecuniary legacies and it seemed unlikely that they were to take effect only against the cash and chattels.

In *Re Borne* [1944] Ch. 190, the testatrix made a will in 1935. One of her dispositions is stated in the report of the judgment of Vaisey, J., to have been of "£300 Union of South Africa Stock 1945–75": at the beginning of the report the gift is described as one of "£300 Union of South Africa Stock." The latter statement can scarcely be right: the case is reported on the footing that the security referred to was actually "Union of South Africa 5 per cent. Inscribed Stock 1945–75," and while this identification is doubtless possible from the form of words used in the report of the judgment, which includes the dates, no identification seems possible at all from a form of words referring neither to dates nor rate of interest. The gift, then, was of "£300 Union of South Africa Stock 1945–75," and the stock referred as having those dates was a 5 per cent. stock. The gift was obviously not specific, as the gift was of £300 of such stock without any word or words to connect it with any particular holding belonging to the testatrix. As a matter of fact, she did own £300 of the stock in question at the date of her will, and would still have owned it at the date of her death, but for the fact that all holdings in this country of that stock were transferred to the Treasury by a requisitioning order made shortly before her death. Actually, owing to illness, the testatrix had not executed any transfer in favour of the nominees of the Treasury, but the order had, apparently validly, vested the title in the Treasury before the testatrix died, and the price to be paid was fixed by the order at £107 5s. per cent.

Having held that the gift was not specific, the learned judge had to meet the argument that the gift still failed for the same reasons as had that in *Re Gray*, 36 Ch. D. 205. But he was able to distinguish that case; it dealt with a general legacy of shares in a banking institution, which had been incorporated with unlimited liability at the date of the will, but before the testator's death had become limited, its capital structure having also been completely altered. It had been held in *Re Gray* that the gift could not take effect because there were no means of assessing the value at the testator's death of a then non-existent sort of share. But in *Re Borne* the stock had not ceased to exist. There was a market for it outside the United Kingdom and all that had happened was that holdings here had been acquired by the Treasury. Moreover, the Treasury was no doubt willing to acquire any available amounts of the stock in question at £107 5s. per cent. The gift was thus held to be one of an amount equal to the purchase price of £300 stock, i.e., £321 15s.

Re Gifford and *Re Borne* show that the court is now prepared to go some considerable way to uphold gifts if it is reasonably possible to do so. We have moved away from the days when Hall, V.-C., held that a gift of "my debentures in the X company" was adeemed by the conversion of the testator's holding of debentures into debenture stock (*Re Lane*, 14 Ch. D. 856). But testators should not be encouraged to presume on the court's benevolence. It is no doubt not altogether easy to say what the testator was trying to do by the gift of "my stock and shares" in *Re Everett*. But it is not too much to say that he could have achieved his object, whatever it was, without using the unfortunate phrase at all. In *Re Gifford* the testatrix clearly wanted to settle the four houses and a fund of a certain value. We do not know what its value was because we have no information as to the value of the testatrix's holding in the Brompton, Chatham, Gillingham & Rochester Water Co., but one factor in the total was an amount of about £750, which the testatrix chose not to express simply as £750, but by reference to her holdings of Government stock. It is difficult to imagine that there was any adequate reason for doing what the testatrix wished in the way

actually used rather than by a simple settlement of the houses and £x. The same reasoning applies to *Re Borne*. Clearly, the testatrix wanted the legatee to get a legacy worth rather more than £300, as the South Africa 5 per cent. stocks always used to stand distinctly above par. But why did she do it by reference to the South African stock? Presumably, because she happened to have £300 of it. Fortunately for the legatee, the testatrix, having elected to give the stock, did not insert the word "my," which would have made the gift specific, and so, in the events which happened, would have caused it to fail altogether. But the form of gift actually used was risky, whereas a simple pecuniary legacy of £300 (or 300 guineas, if the intention was to go rather above £300) would have been obviously safer and more satisfactory. No doubt the lay client tends to think of his estate in terms of the investments in which it happens to be at the date when he makes his will, rather than as being of a particular total value or thereabouts, and he forgets that he may change his investments or they may be changed by conversion. This tendency is not so dangerous as regards realty, because realty is taken much more seriously by the average layman, so that when he sells one piece and buys another he may well remember that his will needs to be changed. But, having made a bequest of or by reference to a certain stock, he would not be so likely to think of the effect of the change upon his will. None of the wills in the cases mentioned above appears to have been home-made; the cases thus remind us that we ought to discourage testators from instructing us to accept similar risks.

Landlord and Tenant Notebook.

Importance of ascertaining Standard Rent.

THE penal provisions of the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, include the following: s. 11 of the Increase of Rent, etc., Act, 1920, enacting "A landlord of any dwelling-house to which this Act applies shall, on being so requested in writing by the tenant of the dwelling-house, supply him with a statement in writing as to what is the standard rent of the dwelling-house, and if, without reasonable excuse, he fails within fourteen days to do so, or supplies a statement which is false in any material particular, he shall be liable on summary conviction to a fine not exceeding ten pounds," and s. 14 (3) of the Rent, etc., Restrictions (Amendment) Act, 1933, which runs: "If any rent book or similar document which does not conform to the prescribed requirements is used by or on behalf of any landlord, the landlord shall be guilty of an offence and liable on summary conviction thereof to a fine not exceeding ten pounds." Subsection (1) (*b*) of the same section authorised the Minister of Health to make regulations prescribing "the matters as to which notice is to be given to tenants . . . by means of notices inserted in rent books and similar documents . . ." And by reg. 4 of the Rent Restrictions Regulations, 1940, every rent book or other similar document used by or on behalf of any landlord, etc., shall contain a notice, in the appropriate form set out in the Second Schedule, etc., of all the matters referred to in the said form, which form includes: "4. The standard rent of the premises is per ."

It will be observed that the provisions governing statements in rent books are more exacting than that which obliges a landlord to supply a statement. For one thing, s. 11 of the 1920 Act speaks of a "statement as to what is the standard rent of the dwelling-house," while the form in Sched. II to the 1940 Regulations calls for a statement of the amount. For another thing, "reasonable excuse" is made a defence to a charge under s. 11 of the 1920 Act, but s. 14 (3) of the 1933 Act contains no such qualification. I do not think that these differences are accidental. At the time when the 1920 Act was passed many landlords could plausibly answer the request with "I don't know," and as time went on it might become more and more difficult to find out whether premises had been let on 3rd August, 1914, and, if so, at how much; the 1933 Act recognised this difficulty by introducing the provision to be found in s. 6 authorising courts to determine standard rents, in the absence of other evidence, by reference to those of similar dwelling-houses in the neighbourhood. It may well be that, having thus dealt with the difficulty referred to, the Legislature, without seeing fit to amend the older provision, decided to make future enactments absolute.

It may also well be that if the respondent landlord in *Austin* v. *Greengrass* (1944), 60 T.L.R. 273, an appeal by case stated from a decision of a Metropolitan magistrate, had been requested to supply a statement under s. 11 of the 1920 Act, and replied: "The standard rent of the whole house, £78 per annum, the tenant paying rates," she would have been held thereby to have made a statement as to the standard rent, or at all events to have had reasonable excuse for not doing so. For the facts were that she let the ground floor of a house, that its standard rent had never been determined, and that she therefore could not know what it was. But she was prosecuted for using a rent book which did not conform to the prescribed requirements, i.e., under s. 14 (3) of the 1933 Act, and though the information was dismissed by the learned magistrate, the Divisional Court held that the offence had been proved.

The magistrate's view was that the standard rent could be ascertained by apportionment; that in the absence of agreement between landlord and tenant it was to be determined by the county court; that until this was done there was no standard rent. Further, that if the question of whose duty it was to apply for apportionment were relevant, the duty was on the tenant as being the party complaining. Also, that if there were a standard rent, the landlord did not know what it was, and the statutory requirements did not therefore apply.

The Divisional Court agreed that the rent should be apportioned, but apparently made no comment on the suggestion that this could be done by agreement. It was not necessary to deal with this point, but for practical purposes it is worth examining; and my view is that the figures cannot be agreed by the parties. The whole scheme of the Acts is to restrict rents by fixing a *standard* rent, and it is the Acts which fix the amount, not those who receive and pay rent. I do not know whether the learned magistrate was influenced by the opening words of s. 12 (3) of the Increase of Rent, etc., Act, 1920: "Where, for the purpose of determining the standard rent or rateable value of any dwelling-house to which this Act applies, it is necessary to apportion the rent at the date in relation to which . . ." and considered that it was so necessary when the parties could not agree an apportionment. But in the many cases in which the subsection has been interpreted, it has never been suggested that parties could agree figures, any more than they can agree the figure which has to be split.

The Divisional Court went on to hold that the ground floor had a standard rent from the moment it was let as a separate dwelling-house, and that as the landlord had to state that rent in the rent book it was up to him to ascertain it by applying for apportionment. (The letting was weekly, so the respondent was bound to provide a rent book "or other similar document" for use in respect of the dwelling-house: Increase of Rent, etc., (Restrictions) Act, 1938, s. 6.)

This view fits in rather well with the judgment of Salter, J., in *R.* v. *Marylebone County Court Judge* [1923] 1 K.B. 365, which decided that a county court was obliged to apportion rent under s. 12 (3) of the 1920 Act, whether the question was raised in the course of an action claiming something else or as the sole question. The learned judge referred to s. 11, under which a landlord was bound to make a true statement of the standard rent unless he had reasonable excuse; if there were no jurisdiction to apportion, the section would be useless to the tenant in those cases in which he needed it most.

One argument advanced in *Austin* v. *Greengrass* resulted in some practical advice worth noting. It was pointed out to the court that no application could be made to apportion till letting had occurred (for neither *R.* v. *Marylebone County Court Judge* nor any other authority suggests that it is possible before any tenancy of "comprised" premises be granted, let alone necessary, to ascertain the standard rent by means of an apportionment summons.) The solution suggested or prescribed by the Divisional Court was that the landlord should state in the rent book that the standard rent of the whole house was so much and that he was applying for apportionment; when the figure was fixed, it would be filled in; in the meantime, the rent charged would be "regarded as provisional." What has to be apportioned is not, of course, always a *standard* rent, but the advice can be adapted to meet such cases and will no doubt be acted upon, though one can hardly say that the result is strict conformity to the prescribed requirements. What has happened is that Parliament and the Ministry of Health have overlooked something, and the judiciary have suggested a way out. And, as Goddard, L.J., recently observed in *Gover* v. *Field* (1944), 1 All E.R. 151 (C.A.): "These Acts are as difficult and complicated as any on the Statute Book, and people who let rooms or small houses and are often themselves in quite a humble station of life find to their cost that they are engaged in a perilous business."

Obituary.

MR. B. FARRER.

Mr. Bryan Farrer, barrister-at-law and Bencher of Lincoln's Inn, died on Sunday, 23rd April, aged eighty-five. He was educated at Eton and Trinity College, Oxford, and was called to the Bar by Lincoln's Inn in 1894. He practised at the Chancery Bar until 1925, when he retired.

MR. T. R. DOOTSON.

Mr. Thomas Robert Dootson, solicitor and Clerk to the County and Borough Magistrates, Leigh, Lancs, died recently aged seventy-nine. He was admitted in 1895.

MR. A. LEWENSTEIN.

Mr. Arthur Lewenstein, solicitor, of Hull, died on Thursday, 20th April. He was admitted in 1938.

MR. W. H. PETHYBRIDGE.

Mr. William Hampton Pethybridge, solicitor, of Cardiff, died on Wednesday, 19th April, aged seventy-eight. He was admitted in 1893, and was Lord Mayor of Cardiff from 1924–25.

To-day and Yesterday.

LEGAL CALENDAR.

May 1.—In the fourteenth year of the reign of George II a statute was passed enacting that: "If any person or persons shall . . . after the first day of May, 1741, feloniously drive away, or in any other manner feloniously steal, one or more sheep . . . or shall wilfully kill one or more sheep . . . with a felonious intent to steal the whole . . . or any part of the carcass or carcasses . . . the person or persons guilty of any such offence . . . shall suffer death . . . without benefit of clergy."

May 2.—Towards the end of December, 1836, a bricklayer came upon a woman's trunk wrapped in sacking in the Edgware Road. Subsequently the legs were discovered in a ditch near Camberwell. The head was found in the Regent's Canal and preserved in spirits for identification. After a broker residing in Goodge Street had recognised the remains as those of his sister Hannah Brown, who had vanished on Christmas Eve, the police got on the track of a man named James Greenacre, whom she had been about to marry. The day before he was to have sailed for America they arrested him at his lodgings in Kennington Road, with the woman with whom he was then living. In his boxes were found many articles belonging to the dead woman. He was convicted of murder and hanged at Newgate on the 2nd May, 1837.

May 3.—Elizabeth Branch was the wife of a farmer and treated her servants with such tyranny and cruelty that after her husband's death none would work for her but casual vagrants or penniless wretches sent her by the parish authorities. Her daughter was just as bad and was equally notorious in the countryside. One day Jane Buttersworth, a poor girl who had been sent to work for her, was longer than necessary in fetching some yeast and told a lie in excuse. Thereupon mother and daughter struck her on the head, pinched her ears, held her down, while they beat her with twigs, broomsticks and one of her own shoes, and after she had fainted threw a pail of water over her. In about half an hour she died and they buried her privately. Subsequently an inquest revealed several wounds on her body almost any one of which would have proved mortal. The two woman were tried for murder and condemned to death. On the 3rd May, 1740, they were executed at Ilchester, being taken to the gallows between three and four in the morning for fear they should be lynched by the mob. Thousands who gathered subsequently were bitterly disappointed.

May 4.—Hannah Dagoe was a Covent Garden basket woman, a big, strong masculine Irishwoman. She made the acquaintance of a poor widow who lived in a little room with some remnants of good furniture and one day, in her absence, stripped the place of everything it contained. In Newgate she terrorised her fellow prisoners and stabbed a man who had given evidence against her. She was hanged at Tyburn on the 4th May, 1763. On the way to the gallows she ignored the ministrations of the Roman Catholic priest who attended her. At the last moment she got her arms loose and attacked the executioner, nearly knocking him down. She dared him to hang her and, to cheat him of his perquisites, started distributing her clothes among the spectators. After a great struggle the rope was placed round her neck, but before the signal could be given she threw herself out of the cart with such violence that she broke her neck and died instantly.

May 5.—On the 5th May, 1829, there was a meeting of magistrates at the Wellington Hotel in Rochdale to examine several men arrested in connection with a riot the previous week. They discharged seven and committed sixteen for trial. As there was risk of a rescue the prisoners were taken back to gaol handcuffed, fastened together with a rope and guarded by a detachment of the Carabineers. On the way the mob vented execrations against the soldiers, pelting them with stones, and shouted expressions of sympathy for the prisoners. At the gaol the military guard consisted of only nine men of the 67th Foot, and these the mob attacked. As they ignored the sergeant's warning, he ordered his men to fire, first over their heads and, when that produced no result, into the crowd. Several were mortally wounded and the rest fled.

May 6.—Lieutenant-General James Murray became governor of Minorca in 1774. Five years later war broke out with France and Spain, and in August, 1781, he had to shut himself up in Fort St. Philip with a force of little more than 2,200 men to withstand a besieging army of 16,000. The extreme gallantry of his five months' defence made him a popular hero, yet on his return to England he had to answer before a court martial to several charges brought against him by the lieutenant-governor, alleging waste of public money, cruelty and the like. He was honourably acquitted on all save two trivial points. Immediately afterwards a Mr. Sutherland brought an action against him for illegal suspension from the office of Judge of the Vice-Admiralty Court in Minorca. The general had offered to reinstate him on condition that he made a certain apology and, when the matter was referred home, the King had approved this course. Yet the jury found that Murray had acted arbitrarily and unreasonably and awarded £5,000 damages against him. On the 6th May, 1785, the House of Commons by a majority of 57 to 22 votes decided that the damages and costs should be paid out of public money.

May 7.—On the 7th May, 1804, "a court martial was held on board the *Illustrious* on the armourer belonging to the *Leda* for having thrust a red-hot iron into the left side of a seaman belonging to the same ship, which occasioned his death in about five minutes. The armourer is condemned to be hanged."

MADELEINE SMITH.

In the new play at the Prince of Wales Theatre, "The Rest is Silence," Miss Ann Todd handles with expected brilliance the part of Madeleine Smith, the girl whose strange story unfolded in the limelight of a sensational murder trial still remains, after nearly ninety years, one of the most fascinating of legal enigmas. Twenty years old, vivacious, intelligent and carefully brought up, the eldest of the family of an eminent Glasgow architect, she engaged in a passionate love affair with a chance acquaintance, a young clerk of French extraction named Pierre L'Angelier, a stranger to her home. He was anxious to marry her, and her long and intensely emotional letters armed him with a power which he showed every sign of using when her infatuation faded and she tried to break with him. After terrified entreaty had failed to recover them, she changed her tactics and seemed to grow affectionate again. Very soon afterwards he died poisoned by arsenic, but after a long trial at Edinburgh the jury returned a verdict of "Not Proven" by a majority of thirteen to two. Much evidence was called on both sides, but in his account of the case the late Lord Birkenhead summed up the matter thus: "She asked him to come and he went to keep the appointment. She had poison. He was poisoned by that kind of poison. Did they meet and did she administer it? The question is one that can only be answered by those who heard the evidence and saw the witnesses." In court she made the strongest impression possible. "Her step was as buoyant and her eyes as bright as if she were entering a box at the opera," wrote one observer. "Her features express great intelligence and energy of character," wrote another "Her profile is striking . . . Her eyes are large and dark and full of sensibility. She looks younger than her reputed age of twenty-one." Altogether, she was "more than ordinarily prepossessing" and "her very aspect and demeanour seemed to advocate her cause," as she sat simply and elegantly dressed, having pleaded "Not Guilty" in a "sweet, clear treble." In prison she had devoted her time to letter-writing and light literature, but often expressed regret at the want of a piano. At the trial she was disappointed in the summing-up and considered the Lord Justice Clerk "a tedious old man," but she was "delighted with the loud cheer the court gave" after the verdict. Writing afterwards to the matron of the prison, she said she had received hundreds of letters "all from gentlemen, some offering one consolation, and some their hearts and homes." Four years later she married an artist living in Pimlico.

Books Received.

Supplement to the Law of Income Tax (Ninth Edition). Including the "Pay as you Earn" Acts and Regulations. By His Hon. Judge KONSTAM, K.C. 1944. pp. 51. London: Stevens & Sons, Ltd.; Sweet & Maxwell, Ltd. 5s. net.

Eyesight and Industry. A speech delivered by the Vice-Chancellor of the University of Oxford at a Mansion House Luncheon on 22nd February, 1944. Oxford: University Press.

Principles of the Common Law. Fifth Edition. Vol. 1. By A. M. WILSHERE, M.A., LL.B., of Gray's Inn, Barrister-at-Law. 1944. Demy 8vo. pp. xxxii and (with Index) 475. London: Sweet & Maxwell, Ltd. 37s. 6d.

The Annual County Courts Practice. Supplement, 1944. Edited by H. P. STAINES, Registrar of the Hanley and Stoke-upon-Trent County Court. Costs and Court Fees. By F. G. GLANFIELD, LL.B., Senior Registrar of the Birmingham County Court. Demy 8vo. pp. vii and (with Index) 331. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. 25s. net.

The Elements of the Law of Torts. By A. RAYMOND BLACKBURN, LL.B., and EDWARD F. GEORGE, LL.B., Solicitors of the Supreme Court. 1944. Demy 8vo. pp. xvi and (with Index) 271. London: Sweet & Maxwell, Ltd. 15s. net.

Advantage has been taken of the need for reprinting the War Damage Commission's explanatory pamphlet C.1/A to revise the publication. Changes in the law resulting from the War Damage (Amendment) Acts passed since 1941, and the recent Treasury direction dealing in particular with the position of damaged or destroyed post-1914 houses, have had the effect of widening the benefits conferred on the owners of land and buildings. The revised pamphlet sets out in simple terms the procedure consequent upon these changes, and experience of the working of the Acts (now consolidated as the War Damage Act of 1943) indicated a number of other respects in which its advice has been rendered more clear and up to date. There has now, too, been added a short informative statement on the rights of tenants under the Landlord and Tenant War Damage Acts, 1939 and 1941. C.1/A is provided free to every applicant who requires Form C.1 on which to notify damage to land or buildings. Others who desire copies may obtain them from H.M. Stationery Office, or through the booksellers, at 1d. per copy or 3s. for fifty.

Our County Court Letter.

The Employment of Designated Craftsmen.

In *Pugh* v. *Martin Wilcsmith & Son, Ltd.*, at Malvern County Court, the claim was for £1 12s., arrears of wages. The plaintiff was a painter, and his case was that in September, 1942, he was directed by the Ministry of Labour to work for the defendants. Finding that he was not to be allowed to work in a gang, the plaintiff had refused to work for two days. On ascertaining (from the national service officer) that he and other painters could not insist on working in a gang, the plaintiff had resumed work with the defendants. They had, nevertheless, omitted to pay him wages for the two days, viz., 32s., as claimed. The defendants' case was that it was impossible for the plaintiff and the other painters to work in a gang. If the men had offered to start work, on the first day on which they were directed to do so, work would have been found for them at once. His Honour Judge Roope Reeve, K.C., held that the plaintiff had not established the preliminary point on which the statutory liability of the employer depended, viz., that the plaintiff was "capable and available for work." The plaintiff had coupled his attendance at work with an unjustifiable condition, viz., that he should work in a gang. Judgment was given for the defendants, with costs.

Tenancy on Default in Completion.

In *Turley* v. *Whitfield*, at Birmingham County Court, the claim was for possession of a house. The plaintiff's case was that in March, 1939, he had entered into a written contract to sell the house to the defendant. Completion was fixed for April, 1939, but had not taken place. The defendant was, nevertheless, permitted to enter into possession in June, 1939. Clause 8 of the contract provided that the purchaser should pay 12s. "occupational rent" per week, pending completion, but that no tenancy should be created. The actual amount paid by the defendant was 10s. per week, this being a fair rent for the house in comparison with others in the neighbourhood. Although a rent book had been issued, and the defendant's name appeared as tenant, it bore inside the words in ink, "payments record." The defendant's case was that the long period of his occupation, the issue of the rent book, and the manner in which his weekly payment had been calculated, were evidence of a tenancy. There had been no termination of the contract, and he was in a position to claim specific performance if and when he could find the purchase money. His Honour Judge Dale held that the facts of the case brought it within the decision in *Francis Jackson Developments, Ltd.* v. *Stemp* (1943), 2 All E.R. 601. The case was distinguishable on the facts from *Dunthorne and Shore* v. *Wiggins* (1943), 2 All E.R. 678. Judgment was therefore given for the defendant, with costs.

Administrator's Claim to Gold Chain.

In *Baker* v. *Harris*, at Birmingham County Court, the claim was for the return of a gold watch chain or £20, its value. The plaintiff was the administrator of his deceased brother, who was the step-father of the defendant. The chain had been in the possession of the intestate, to the knowledge of the plaintiff, who asked the defendant to hand over the chain among other jewellery. The defendant had promised to bring the chain next time he called, and had made no claim to ownership. When interviewed by the plaintiff's solicitor, some months later, the defendant had still made no claim to ownership. He had explained that the chain had belonged to his father, who had left it to his mother, who had given it to the intestate on marrying him as her second husband. For sentimental reasons the defendant would therefore have liked to keep the chain, if the next-of-kin would agree. The next-of-kin, however, were not agreeable to this proposal. The defendant's case was that the chain never belonged to the estate of the intestate. By arrangement with the defendant's mother, the intestate had been permitted to wear the chain during his life, on condition that it should belong to the defendant on the death of the intestate. Moreover, the defendant's father had died prior to the commencement of the Administration of Estates Act, 1925, and his mother had no right to give the chain to her second husband. It was contended for the plaintiff that, as the chain had been found among the assets of the intestate, and had been removed by the defendant, the latter had failed to discharge the onus of proof that the chain was his own property. His Honour Judge Dale gave judgment for the plaintiff, with costs on scale A.

According to a note in *The Times*, Mr. George Muff, M.P., speaking on Monday last at Hull at the annual meeting of the Discharged Prisoners' Aid Society, said that the Criminal Justice Bill, which included among its clauses the abolition of flogging, was to be reintroduced in Parliament as quickly as possible. He added that a departmental committee was also to be set up to try to carry out various reforms. We understand, however, that there has been no decision by the Government to reintroduce this Bill at present. The Bill, which was first introduced by Sir Samuel Hoare when he was Home Secretary, was withdrawn in November, 1939, the Government having decided that time could not then be found for it. Its general object was to improve the methods of dealing with persons found guilty of offences, including adult offenders, and those who committed repeated offences.

Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29–31, Breams Buildings, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Power of Attorney—Implied Power of Sale.

Q. Before going to live in India in 1924, A executed a power of attorney whereby she appointed her sister, B, to be her attorney for the purposes therein mentioned (*inter alia*): "(*a*) To invest any money either in the name of my attorney or in my own name in any investments whether authorised by law or not for the investment of trust funds and to vary such investments from time to time. (*b*) To execute and do in my name or otherwise all such acts, deeds, agreements and things as my said attorney may think proper for the purpose of giving effect to the powers hereby conferred and generally to manage all my concerns and affairs at her absolute discretion and as fully and effectually as I could do if I were present and acting in my proper person and without being liable to account for any act or default done or committed in good faith. (*c*) All whatsoever my attorney shall do or cause to be done in or about the premises I hereby covenant with my said attorney to allow ratify and confirm." The power of attorney does not, however, contain any clause giving the attorney, B, any specific power to sell A's property or investments. A, who is still in India, has written to her brother in England expressing a wish or request that he should sell her holding of stock in a certain English company. If A's brother acts on her letter and sells the stock, can the transfer thereof be validly and effectually executed by B as A's attorney, or would B be exceeding the powers given her by the instrument or acting outside its scope, in view of the absence of any specific power of sale contained in it? Or do clauses (*a*) and (*b*) give B an implied power to sell the stock and execute the transfer? It is not stated whether the proceeds are directed to be re-invested or sent out to A in India.

A. It is a matter for the particular company or bank at which the stock is registered whether the power would be accepted as extending to authorise a sale of the stock in question. The present writer can only say that he could not advise any company to register a transfer of the donor's stock which purported to be executed under this power, assuming that there is no other clause in the power which extends the authority.

Workmen's Compensation and Solicitor's Costs.

Q. We have acted for a workman who, when he consulted us, had been in receipt of a weekly sum paid by his employers' insurers under the Workmen's Compensation Acts, and had later returned to work. His purpose was to secure payment of a lump sum. We advised him on this, and as he was not then receiving any compensation we advised him to file a declaration of liability after obtaining medical evidence of the reasonable probability of incapacity arising at a later date. We negotiated a declaration of liability and filed one by agreement with the employers. The employers' insurers decline to pay or contribute to our costs in this matter. It has been suggested that we cannot render a bill against our client, and our only method of receiving costs is by making an application under r. 76 (4) of the Workmen's Compensation Rules, 1926. (*a*) Is this correct? (*b*) If (*a*) is answered affirmatively, should our bill be a solicitor and client or party and party bill, and is the amount payable by the employers' insurers of our client. If the former, what means exist of recovering the amount? (*c*) If (*a*) is answered negatively, what steps must we take before presenting our solicitor and client bill to our client and what part (if any) of that is recoverable from the employers' insurers.

A. The application for costs is governed by r. 19 (6) (*b*). The judge has an unfettered discretion as to the kind of costs and as to whom shall be ordered to pay them. If this rule did not apply, r. 76 (4) would be appropriate, as there has been a "proceeding" (*Oliver* v. *Nautilus, etc., Co.* [1903] 2 K.B. 639).

The opening ceremony of a Polish Faculty of Law at Oxford University took place recently. It is of special importance, because Polish law students unable to graduate in their own country during the war will be able to complete their studies in their own language in England. Professor Stefan Glaser, Polish Professor of Criminal Law, has been appointed Dean of the Faculty. The opening ceremony was attended by the Polish President, Mr. Raczkiewicz, the Polish Prime Minister, Mr. Mikolajczyk, and members of the Polish Government.

The trial of defended and undefended divorce suits at the principal assize towns will begin in June. Five judges of the Divorce Division will undertake the work. The President, Lord Merriman, is to sit at Liverpool on 6th June and at Manchester on 4th July. Hodson, J., will hear divorce suits at Birmingham, beginning on 10th July. Henn Collins, J., is to go on the Western Circuit, sitting at Exeter, Bristol and Winchester in June and July. Pilcher, J., will attend at Swansea on 10th July and Denning, J., will be the divorce judge at Leeds on 10th July. At the smaller assize towns divorce cases are to be heard by King's Bench judges. Three judges of the Divorce Division will be left to deal with suits in the High Court.

Notes of Cases.

HOUSE OF LORDS.

Reville, Ltd. *v.* Prudential Assurance Co., Ltd.

Viscount Simon, L.C., Lord Atkin, Lord Thankerton, Lord Russell of Killowen and Lord Porter. 3rd April, 1944.

Emergency legislation—Landlord and tenant—War damage—Notice of retention—Reduction in rent—Date from which reduced rent payable—Landlord and Tenant (War Damage) Act, 1939 (2 & 3 *Geo.* 6, *c.* 72), *ss.* 10 (1) *and* 15 (5)—*Landlord and Tenant (War Damage) (Amendment) Act*, 1941 (4 & 5 *Geo.* 6, *c.* 41), *s.* 2 (5) *and Schedule.*

Appeal from a decision of the Court of Appeal affirming a decision of His Honour Judge Hurst (87 SOL. J. 200).

The appellants were the tenants of certain premises in Oxford Street at a rent of £2,000 under a ninety-nine years' lease, which was both a "ground lease" and a "multiple lease" within s. 24 of the Landlord and Tenant (War Damage) Act, 1939. In 1940, the premises suffered "war damage" within the meaning of s. 24. Early in 1941 the premises were requisitioned by the Crown, and the greater part of the war damage was put right at the public expense. A notice of retention dated 19th November, 1941, was served. After some correspondence, the parties agreed that a large part of the premises was capable of beneficial occupation and that the rent properly payable in respect of that part was £1,600. The tenants, however, contended that the reduction in the rent should operate retrospectively as from the date of the damage, while the landlords refused to go further back in the reduction than the service of the notice of retention. The landlords applied under s. 10 (1) and s. 15 (5) of the Landlord and Tenant (War Damage) Act, 1939, as amended by s. 2 (5) of the Landlord and Tenant (War Damage) (Amendment) Act, 1941, to have it determined whether the appellants should be allowed, and, if so, to what extent, to exercise the right of retention, and, alternatively, for a direction, on the footing that part of the land in question was capable of beneficial occupation that there should be payable by the tenant such rent at such times and in respect of such period as the court might fix. Section 10 (1) (*b*) of the 1939 Act provides that the effect of a notice of retention is that, subject to the court's powers, no rent shall be payable in respect of the period beginning with the date on which the notice was served (or is deemed to have been served) and ending with the date on which the land is rendered fit. Section 10 (1) (*c*) provides that another result of the notice is that "where the court is satisfied on the landlord's application made at any time before the land has been rendered fit, that part of the land is capable of beneficial occupation, the court may direct that there shall be payable by the tenant such rent, at such times and in respect of such period as the court may fix." Section 15 (5) as amended by s. 2 (5) and the schedule of the 1941 Act, provides that "if on such an application the court, having regard to the matters referred to in subs. (3) of this section, is not satisfied that it is equitable to allow the tenant to exercise the right of disclaimer or retention as respects the lease as a whole or as respects one or more of the separate tenements comprised therein, the court shall direct that the land comprised in the lease shall not be deemed to be unfit for the purposes of this Part of this Act and that any notice of disclaimer, notice of retention or notice to elect relating thereto shall cease to have effect: Provided that the court may, if having regard to the extent of the war damage suffered by the land it considers it equitable to do so, order that the rent reserved by the lease shall, until the war damage is made good, be reduced to such extent as may be specified." At the hearing in the county court the landlords withdrew the application under s. 15 of the 1939 Act, and relied on s. 10 (1) (*c*). The learned county court judge held that the landlords were entitled so to do under Ord. XV, r. 6 of the County Court Rules, and that the application was simply one under s. 10, and that the tenants were entitled to a reduction of the rent from the date of the service of the notice of retention only. The Court of Appeal held that the learned county court judge was wrong in refusing to consider s. 15. Order XV, r. 6, did not apply to the claim before him; but the effect of s. 15 was the same as that of s. 10. The learned judge had rightly construed s. 10 and the appeal must be dismissed. The tenants appealed.

VISCOUNT SIMON, L.C., said he agreed that the County Court Rules, Ord. XV, r. 6, had nothing to do with this application. It was a rule which referred to actions. The appeal must be dealt with on the footing that the tenants were entitled to urge the judge to act under s. 15 and to exercise such discretion as he had under the proviso to subs. (5) in their favour. If this discretion left the judge with any power to fix a reduced rent for any earlier period, the case must go back to the county court judge. He agreed with the Court of Appeal that the county court judge had no discretion to go back earlier than the date of service of the notice. The appeal must be dismissed.

The other noble and learned lords agreed in dismissing the appeal.

COUNSEL: *Turner-Samuels; Denning*, K.C., and *Gilbert Dare.*

SOLICITORS: *Cohen & Cohen; C. H. Browne.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

CHANCERY DIVISION.

J. Lyons & Co., Ltd. *v.* Attorney-General.

Uthwatt, J. 29th March, 1944.

Emergency legislation—War damage—Electric fittings suffer damage—Compensation—Meaning of "plant"—Rating and Valuation Act, 1925 (15 & 16 *Geo.* 5, *c.* 90), *s.* 24—*Plant and Machinery (Valuation for Rating) Order*, 1927 (*S.R. & O.*, 1927, *No.* 480)—*War Damage Act*, 1943 (6 & 7 *Geo.* 6, *c.* 21), *s.* 103.

Adjourned summons.

The War Damage Act, 1943, in s. 103, defines the expression "land" as including such plant and machinery as would, if the land were a hereditament to which s. 24 of the Rating and Valuation Act, 1925, applied, by virtue of the provisions of that section and of the Plant and Machinery (Valuation or Rating) Order, 1927, be deemed to be part of the land. The expression does not include any other plant and machinery. The order of 1927 provides, by the third schedule, that the plant and machinery specified in paras. (*a*) to (*h*) thereof used, *inter alia*, in connection with lighting of buildings shall be deemed to be part of the hereditament for the purpose of s. 24. Paragraph (*e*) includes plug sockets and electric lamps. The plaintiffs were in occupation of certain premises which they used as a tea shop. The premises were lighted by electric lamps fitted into sockets in the ceiling. The premises suffered war damage and the plaintiffs claimed a declaration that the lamps and fittings were land within the definition in s. 103, and accordingly a subject of compensation under Pt. I of the War Damage Act, 1943. The Attorney-General, the defendant to the summons, opposed the declaration.

UTHWATT, J., said that two questions were raised. The first was whether, as a matter of construction, it was sufficient, as was contended by the company, that electric lamps were in terms specified in the schedule to the order, or, as was contended by the Attorney-General, it was only electric lamps which were plant and machinery that under the section formed part of the hereditament. The second question was whether, assuming the company failed in their first contention, these particular lamps were "plant" within the meaning of the section. Upon the first question he was of opinion that the contention of the company was not correct. The general structure of the section was that such plant and machinery in or on the land as fell within the terms of the third schedule was to be deemed part of the hereditament, not that as such articles as fell within these terms were plant or machinery. The question then arose whether the lamps and fittings in question were plant. He did not think the use throughout s. 24 of the word "plant" as part of the phrase "plant and machinery" had the effect of confining the meaning of the word to such plant as was used for mechanical operations or processes. If these articles were plant it would only be because they were on premises exclusively devoted to trade purposes. Trade plant alone need be considered. He was content to accept the description in *Yarmouth* v. *France*, 19 Q.B.D. 647, that "plant" included apparatus or instruments used by a business man carrying on his business but did not include stock-in-trade or the place in which the business was carried on. The question at issue might be put thus: were the lamps and fitments properly to be regarded as part of the setting in which the business was carried on or as part of the apparatus used for carrying it on? In his opinion, these lamps were not properly described as "plant" but were part of the general setting in which the business was carried on and they were not machinery or plant for the purposes of the War Damage Act, 1943.

COUNSEL: *Wynn Parry*, K.C., *T. J. Sophian; The Attorney-General* (Sir Donald Somervell, K.C.), and *H. O. Danckwerts.*

SOLICITORS: *Bartlett & Gluckstein; Treasury Solicitor.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

Practice Direction.

IN THE HIGH COURT OF JUSTICE.

PROBATE, DIVORCE AND ADMIRALTY DIVISION.

(DIVORCE).

PRACTICE NOTE.

MATRIMONIAL CAUSES RULES, 1944, RULE 30 (4).

It is directed by the President that:—

In order that the Registrar may issue with his Certificate the necessary directions as to place of trial or hearing required by Rule 30 (4) (*c*), the Petitioner's Solicitors shall lodge with the Certificate required by Section 4 (*a*) of Rule 30 the following Documents:—

(1) A Statement, signed by the Petitioner's Solicitors, indicating the number of witnesses to be called on behalf of the Petitioner, and the name of the town where the Petitioner and each of such witnesses reside.

(2) A Statement, signed by the Solicitors for the Respondent (or any other party defending the Suit) to the effect that the Notice required by Section 4 (*a*) of Rule 30 has been received from the Petitioner's Solicitors and indicating the number of witnesses to be called on behalf of the Respondent (or any other party defending the Suit) and the name of the town where the Respondent (or any other party defending the Suit) and each of such witnesses reside.

Dated this 2nd day of May, 1944.

H. A. DE C. PEREIRA,
Registrar.

Rules and Orders.

S.R. & O., 1944, No. 491/L.20.

SUPREME COURT, ENGLAND—PROCEDURE.

THE NON-CONTENTIOUS PROBATE RULES, 1944.

DATED APRIL 25, 1944.

I, the Right Honourable Frank Boyd, Baron Merriman, President of the Probate, Divorce and Admiralty Division of the High Court of Justice, with the concurrence of the Right Honourable John, Viscount Simon, Lord High Chancellor of Great Britain, and the Right Honourable Thomas Walker Hobart, Viscount Caldecote, Lord Chief Justice of England, by virtue of s. 100 of the Supreme Court of Judicature (Consolidation) Act,

1925, and all other powers enabling me in this behalf, do hereby make the following Rules :—

1. In these Rules "the Principal Rules" means the Rules and Orders and Instructions for the Registrars of the Principal Registry of the Court of Probate in respect of Non-Contentious Business, dated 30th day of July, 1862, as amended by any subsequent Rules.

2. In Rule 110 of the Principal Rules, for the words "Rule 10" there shall be substituted the words "Rules 10 and 10A."

3.—(1) These Rules may be cited as the Non-Contentious Probate Rules, 1944, and shall come into operation on the 1st day of May, 1944, and the Principal Rules shall have effect as further amended by these Rules.

(2) The Non-Contentious Probate Rules, 1944, which came into operation on the 1st day of March, 1944, as Provisional Rules, shall continue in force till the 1st day of May, 1944, on which day the said Rules shall be superseded and replaced by these Rules.

Dated the 25th day of April, 1944.

Merriman, P.
We concur, *Simon*, C.
Caldecote, C.J.

High Court of Justice.

CHANCERY DIVISION.

The Lord Chancellor has made the following appointments and directions :—

1. Mr. Justice Morton to be the Judge for hearing appeals and petitions under section 92 (2) of the Patents and Designs Act, 1907, and Order 53A, Rule 1.

2. Mr. Justice Morton to be the single Judge for the purpose of hearing such appeals under Order 54D of the Rules of the Supreme Court as are to be heard and determined by a single Judge; and Mr. Justice Morton and Mr. Justice Vaisey to be the two Judges constituting a Divisional Court for the purpose of hearing and determining such appeals under Order 54D as, in accordance with the provisions of that Order, are to be heard and determined by a Divisional Court of the Chancery Division.

3. Mr. Justice Morton to be the Judge for the duties imposed by Rule 15 (2) of the Public Trustee Rules, 1912.

4. Mr. Justice Evershed to be the Patents Appeal Tribunal under section 92A of the Patents and Designs Act, 1907.

5. Mr. Justice Morton, Mr. Justice Cohen and Mr. Justice Evershed, or one or more of them, to be the Judges to exercise the jurisdiction in Bankruptcy.

6. Mr. Justice Uthwatt, Mr. Justice Cohen and Mr. Justice Vaisey, or one or more of them, to be the Judges by whom the jurisdiction of the High Court under the Companies Act, 1929, is to be exercised.

Lord Chancellor's Department,
House of Lords, S.W.1.
1st May, 1944.

Parliamentary News.

ROYAL ASSENT.

The following Bills received the Royal Assent on 26th April :—
Army and Air Force (Annual).
Jewish Colonization Association.

HOUSE OF LORDS.

London and North Eastern Railway Bill [H.C.].
Read First Time. [26th April.

HOUSE OF COMMONS.

Agriculture (Miscellaneous Provisions) Bill [H.C.].
Read First Time. [26th April.

QUESTIONS TO MINISTERS.

LEGAL AID SECTION, LONDON DISTRICT.

Mr. BELLENGER asked the Secretary of State for War whether he is aware of the increasing accumulation of work in the London District Legal Aid Bureau owing to shortage of staff; and, as this is affecting a large number of cases involving domestic affairs of serving soldiers, what steps he is taking to augment the present staff.

Sir JAMES GRIGG: Yes, sir. Arrangements are now in hand to increase the staff of this Legal Aid Section. [25th April.

War Legislation.

STATUTORY RULES AND ORDERS, 1944.

No. 466. **Allied Forces.** Order in Council, April 17, amending the Allied Forces (Norwegian Air Forces) Order, 1941.
E.P. 407. **The Canals Agreement** (Powers) Order, April 4.
E.P. 483. **Coal Distribution** Order, 1943, General Direction (Restriction of Supplies) No. 8, April 24.
E.P. 454. **Control of Fuel** (Restriction of Heating) Order, April 14.
No. 435/L.18. **Criminal Procedure,** England. Fees. The Costs of Poor Appellants and Respondents (Summary Jurisdiction Appeals) (Amendment) Rules, April 12.
E.P. 472. **Legal Proceedings** (Local Fuel Overseers) Order, April 18.
E.P. 459. **Lighting** (Restrictions) (No. 2) (Northern Ireland) Order, April 19.
E.P. 458. Lighting (Restrictions) (No. 2) Order, April 19.

DRAFT STATUTORY RULES AND ORDERS, 1944.

Factories. The Electricity (Factories Act) Special Regulations, under s. 60 of the Factories Act, 1937.

LORD CHANCELLOR'S DEPARTMENT.

Memorandum on Service of Legal Process (in Civil Proceedings) on Members of H.M. Forces. April, 1944.

HOME OFFICE.

Memorandum on the Workmen's Compensation Acts, 1925–1943.

WAR DAMAGE COMMISSION.

War Damage to Land and Buildings. A Short Explanatory Pamphlet (Form C.1/A) on Claims under Part I of the War Damage Act, 1943. 2nd ed., March, 1944.

Notes and News.

Honours and Appointments.

It is announced by the India Office that the King has appointed The Hon. BIDHUBHUSAN MALIK to be a Judge of the High Court in Allahabad in the room of The Hon. Uma Shankar Bajpai.

Notes.

The Council of the London Diocesan Fund has elected Mr. Justice Vaisey as chairman of the fund in succession to the late Mr. Robert Nesbitt.

The directors of the Alliance Assurance Co., Ltd., have resolved to declare at the annual general court, to be held on the 24th May next, a dividend of 18s. per share (less income tax) out of the profits and accumulations of the company at the close of the year 1943. An interim dividend of 8s. per share (less income tax) was paid in January last, and the balance of 10s. per share (less income tax) will be payable on and after the 5th July next.

PATENT LAW REFORM.

As announced in the House of Commons last week, the President of the Board of Trade has appointed a Committee on Patent Law. Its terms of reference are :—

"To consider and report whether any, and if so what, changes are desirable in the Patents and Designs Acts, and in the practice of the Patent Office and the courts in relation to matters arising therefrom.

In particular the committee is requested to give early consideration to, and to submit an interim report or reports on—

(*a*) the initiation, conduct and determination of legal proceedings arising under or out of the Patents and Designs Acts including the constitution of the appropriate tribunals; and

(*b*) the provisions of these Acts for the prevention of the abuse of monopoly rights;

and to suggest any amendments of the statutory provisions or of procedure thereunder which in their opinion would facilitate the expeditious settlement and the reduction of the cost of legal proceedings in patent cases and would encourage the use of inventions and the progress of industry and trade."

The members of the committee are: Mr. Kenneth Swan, K.C. (Chairman); Mr. Hubert A. Gill, a past President of the Chartered Institute of Patent Agents; Mr. James Mould, a member of the Patents Bar; Captain B. H. Peter, Managing Director of Westinghouse Brake & Signal Co., Ltd.; Dr. David Pye, C.B., F.R.S., Provost of University College, London; Mrs. Joan Robinson, University Lecturer in Economics, Cambridge; Mr. H. L. Saunders, an Assistant Comptroller in the Patent Office; Dr. A. J. V. Underwood, a Consulting Chemical Engineer; Mr. John Venning, Solicitor.

Wills and Bequests.

Mr. Francis Faris Cullinan, solicitor, of Ennis, Co. Clare, left personal estate in England and Eire, £40,521.

Lieutenant-Commander Robert Peverell Hichens, D.S.O., D.S.C., R.N.V.R., solicitor, of Constantine, Cornwall, left £29,765, with net personalty £26,733.

Court Papers.

EASTER SITTINGS, 1944.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.			EMERGENCY ROTA.	APPEAL COURT I.	Mr. Justice EVERSHED
Monday	May	8	Mr. Farr	Mr. Reader	Mr. Hay
Tuesday	,,	9	Blaker	Hay	Farr
Wednesday	,,	10	Andrews	Farr	Blaker
Thursday	,,	11	Jones	Blaker	Andrews
Friday	,,	12	Reader	Andrews	Jones
Saturday	,,	13	Hay	Jones	Reader

DATE.			GROUP A. Mr. Justice COHEN *Non-Witness.*	Mr. Justice VAISEY *Witness.*	GROUP B. Mr. Justice MORTON *Witness.*	Mr. Justice UTHWATT *Non-Witness.*
Monday	May	8	Mr. Jones	Mr. Andrews	Mr. Farr	Mr. Blaker
Tuesday	,,	9	Reader	Jones	Blaker	Andrews
Wednesday	,,	10	Hay	Reader	Andrews	Jones
Thursday	,,	11	Farr	Hay	Jones	Reader
Friday	,,	12	Blaker	Farr	Reader	Hay
Saturday	,,	13	Andrews	Blaker	Hay	Farr